

**NEW JERSEY DEPARTMENT OF COMMUNITY AFFAIRS
DIVISION OF HOUSING
PROPOSED CHANGES TO THE NEIGHBORHOOD PRESERVATION
BALANCED HOUSING PROGRAM**

- **Maximum project funding increased from \$4M to \$6M**
- **No limit on per unit funding if project meets cost criteria**
- **Cost criteria includes the following**
 - **Maximum square foot construction cost based on building type**
 - **Soft costs capped at 28% of construction cost**
 - **Land cost must be supported by appraisal**
 - **Developer Fee capped at 8% of construction and soft cost with land cost excluded from calculation**
- **Pricing for all new construction projects must meet UHAC guidelines with 5 price tiers (2 below 50%, 3 between 51-80%). The average sales price must not exceed 55% of Median Income and the average rent must not exceed 52% of Median Income**
- **All applications must be submitted electronically through the Department's SAGE system**
- **There are minimum unit and bedroom square footage requirements**
- **All developers must contract with a COAH approved administrative agent to administer the long term affordability controls and must meet all UHAC marketing guidelines including initial listing of units on the NJ Housing Resource Center**
- **All new units must be NJ Energy Star certified and contain minimum required Green Building features. Additional Green Building features are optional**
- **The following types of projects are eligible:**
 - **New single family for-sale.**
 - **New rental projects including projects receiving LIHTCs**
 - **Municipal Acquisition and Construction**
 - **Preservation and Moderate Rehabilitation of existing rental units**

(a)

DIVISION OF HOUSING

Neighborhood Preservation Balanced Housing

Proposed Repeals: N.J.A.C. 5:43-1.7, 3.5, 3.10, 3.13 and 4.3 through 4.10 and 5:43 Appendices A through G and I

Proposed Repeals and New Rules: N.J.A.C. 5:43-2.3, 2.4, 3.3, 3.7, 3.11, 4.1 and 4.2

Proposed New Rules: N.J.A.C. 5:43-3.6 and 4.3 and 5:43 Appendices L and M

Proposed Amendments: N.J.A.C. 5:43-1.1, 1.3, 1.4, 1.5, 2.1, 2.2, 2.4, 3.1, 3.4, 3.6, 3.8, 3.9, 3.12 and 3.14

Authorized By: Susan Bass Levin, Commissioner, Department of Community Affairs.

Authority: N.J.S.A. 52:27D-287.2 and 52:27D-320.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number PRN 2006-319.

Submit written comments by November 17, 2006 to:

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The agency proposal follows:

Summary

Section 20 of the Fair Housing Act of 1985 is the source of the authority for the Neighborhood Preservation Balanced Housing Program. The program was established as an instrument to encourage the development and production of low and moderate income housing in communities that are striving to provide their fair share of the regional housing need. The Balanced Housing Program can further that goal by setting rules that allow Balanced Housing funds to be used flexibly and in a collaborative process with other State programs and other funding sources.

It has been the Department's practice to periodically evaluate the program to insure that its funding priorities and policies reflect sensitivity to current public policy issues and are responsive to market conditions. The first set of Balanced Housing rules were published in 1986. The rules were revised again in 1989, 1992, 1996, 1998 and 2002.

These proposed amendments, repeals and new rules make a variety of policy and technical changes aimed at synchronizing Balanced Housing policies with other important State priorities and initiatives such as promoting the quality of life and environmental benefits of green building, the adoption of the Council on Affordable Housing's (COAH) third round of rules (N.J.A.C. 5:94) governing the constitutional obligation that New Jersey municipalities have to provide a fair share of affordable housing, the introduction of Special Needs Housing Trust Fund, and the adoption of rules (N.J.A.C. 5:80-26) controlling durational and price restrictions on certain existing units to preserve their affordability to low and moderate income households for an appropriate period of time.

In addition, some programmatic decisions have informally relied on a number of policies whose influence should be appropriately acknowledged. Codification of these policies will clarify Department intent and make the program more understandable and predictable for the interested public. The Department and the New Jersey Housing Mortgage Finance Agency (HMFA) frequently partner to improve upon an existing program or to provide a new service or product that requires the resources of both organizations. Home Express is such a program. Multifamily rental projects that seek both Low Income Housing Tax Credits and Balanced Housing are jointly reviewed, avoiding separate reviews by each agency. Rules pertaining to the Home Express program can now be found in N.J.A.C. 5:43-3.4(e). The Special Needs Housing Trust Fund Act, P.L. 2005, c. 163, administered by the HMFA, makes capital financing available to create permanent supportive housing for individuals who might otherwise be institutionalized or homeless. The Balanced Housing amendment at N.J.A.C. 5:43-3.3 codifies the uses of Balanced Housing funds to support and supplement financing that is available through the HMFA. In 2005, the administration and enforcement of housing affordability controls was transferred from the Department to the HMFA. The housing referral lists that were maintained at the Department have been replaced by the New Jersey Housing Resource Center, an electronic inventory of affordable housing that is accessible to the public via the internet. Subchapter 4 requires developers of units financed with Balanced Housing funds to use the Resource Center to market them.

The Commissioner is able to shape the program's priorities and contour them to the needs of the constituent market by making periodic adjustments to N.J.A.C. 5:43-2 (Funding). This is a crucial subchapter, governing the allocation, specific activities and disposition of Balanced Housing funds. Proposed new N.J.A.C. 5:43-2.3 consolidates rules pertaining to the maximum funding per project and under what conditions funds will be made available. A significant increase in subsidy is proposed to respond to increased costs within the construction industry and the reality that land available for development is harder to find and more expensive. Proposed new N.J.A.C. 5:43-2.4 consolidates rules governing permitted costs. Per unit costs determined by bedroom number would be replaced with per unit costs based on square footage.

Currently, most Balanced Housing projects require additional Federal, State or local subsidy in order to be feasible. The use of these other subsidies often creates regulatory and contractual confusion and only serves to delay and escalate the cost of affordable housing. The Department seeks to implement a process that provides a subsidy adequate to cover the entire gap between cost and private resources. Therefore, the former subsidy chart at Chapter Appendices B, C, D, and E are proposed for repeal, while several new safeguards are proposed to ensure that development costs are kept reasonable.

It is in the public interest to reduce the impact on the environment from the development that is generated by the Balanced Housing Program. Therefore, the proposed new rules, repeals and amendments include the introduction of green building requirements to promote environmentally sound, resource efficient development. Costs that are attributable to the green building standards required in Balanced Housing units are incorporated in the new subsidy framework.

The Balanced Housing Program was established to provide the resources that municipalities could tap to implement their Fair Share plans. The 'growth share' methodology adopted by COAH links all growth related construction to an affordable housing obligation. Municipalities now can determine their own obligation, based upon their capacity and desire to grow. COAH's new approach presents an opportunity for the municipalities, supported with Balanced Housing funds, to determine how and where to provide affordable housing. Proposed new N.J.A.C. 5:43-3.6 describes the Municipal Land Acquisition (MLA) Program. This program will allow municipalities to secure land at today's prices and to build affordable housing in advance of the collection of development fees.

As the high cost of living in New Jersey raises, the price of modest housing beyond the means of too many, there is a need to insure that existing rental housing is properly maintained and remains affordable for the foreseeable future. Proposed new N.J.A.C. 5:43-3.7 provides

guidance on applying Balanced Housing funds to the preservation, acquisition, and moderate rehabilitation of rental projects.

As a result of the major policy and program changes discussed above, significant changes are proposed to the existing rules. Numerous new rules are proposed to support the new funding approach to projects.

A more detailed description of the changes, organized by subchapter is described below:

Subchapter 1. General Provisions

N.J.A.C. 5:43-1.1 Purpose

This section has been amended to update and clarify the purpose of the Neighborhood Preservation Balanced Housing Program and to provide overall rationale for the change in the program subsidy formula, which is intended to respond to the market conditions affecting the affordable housing market.

N.J.A.C. 5:43-1.3 Eligible applicants

N.J.A.C. 5:43-1.3(a) has been deleted because municipal governments are not longer the only eligible applicants to the Neighborhood Preservation Balanced Housing Program. Language at existing subsection (b) (recodified as subsection (a)) has been amended to include non-profit and for-profit organizations as entities that the Neighborhood Preservation Balanced Housing Program can accept project applications from, along with municipal governments. New paragraph (a)7 is added to allow the Neighborhood Preservation Balanced Housing Program to accept project applications from municipalities for which COAH has invoked its authority pursuant to N.J.S.A. 52:27D-320(c). This new paragraph allows the Department, pursuant to the Fair Housing Act, to assist affordable housing programs, for an established period of time, which are located in municipalities that have not been granted substantive certification, provided that the affordable housing program will meet all or part of the municipality's low and moderate income housing obligation.

New subsection (b) is added to require that programs and projects in any municipality shall be funded only after receipt by the Commissioner of a written statement in support of the program or project from the municipal governing body, in accordance with the Fair Housing Act, N.J.S.A. 52:27D-320.

N.J.A.C. 5:43-1.4 Eligible activities

N.J.A.C. 5:43-1.4(a)7 was amended to include references to the new Fair Housing Act requirement at N.J.S.A. 52:27D-320(d)7, which mandates compliance with the technical design standards of the barrier free sub-code of the State Uniform Construction Code Act (N.J.S.A. 52:27D-119 et seq.). N.J.A.C. 5:43-1.4(b) has been amended to update the rules with the most current version of COAH's substantive rules, N.J.A.C. 5:94, which were adopted in 2004, rather than N.J.A.C. 5:93. N.J.A.C. 5:43-1.4(c) has been amended to clarify the Department's position that the required affordable portion of mixed income/use project that is part of a COAH approved Fair Share Housing plan or a court-approved judgment of repose or judgment of compliance is not eligible for Balanced Housing funding.

N.J.A.C. 5:43-1.5 Definitions

As discussed in more detail below, several definitions were deleted, amended and added to ensure conformance with the Uniform Housing Affordability Controls (UHAC), N.J.A.C. 5:80-26, while others were amended to provide clarity, as necessitated by other changes throughout the rules.

The following term were made obsolete by the adoption of the Uniform Housing Affordability Controls and were, therefore, deleted: "Adjusted rent," "Affordable housing agreement," "Applicant household," "Assessments," "Base rent," "Closing costs," "Eligible household," "First money mortgage," "Foreclosure," "Gross annual income," "Gross rent," "Household," "Index," "Owner," "Price differential," "Primary residence," "Purchaser," "Renter," "Repayment lien," "Resale price," and "Senior citizen."

The following definitions were added to ensure conformity with the UHAC: "Administrative agent," "Age-restricted unit," "Rent," and "Uniform Housing Affordability Controls (UHAC)."

The following definitions were amended, as noted, to ensure conformity with the UHAC:

The definition of "affordable" was deleted and replaced with language that requires conformance with N.J.A.C. 5:80-26.6 and 26.12, respectively, for sales and rental prices, and to ensure that, when balanced housing is used in conjunction with Federal funding, the Federal program definition of affordable will be used.

The definition of "balanced housing units" was amended in the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26, which replaced the appendix on affordability controls in that rule. Therefore, cross-references to the controls in the existing definition have been deleted so that "balanced housing units" are now defined simply as those units that receive Balanced Housing funding.

The definition of "certified household" has been deleted because the concurrent definition in the UHAC, at N.J.A.C. 5:80-26.2, was replaced with a new definition of certified household. The new definition has been added to these rules to match the UHAC rules.

The definition of "low-income household" has been deleted because the concurrent definition in the UHAC, at N.J.A.C. 5:80-26.2, was replaced with a new definition of low-income household. The new definition has been added to these rules to match the UHAC rules.

The definition of "moderate-income household" has been deleted because the concurrent definition in the UHAC, at N.J.A.C. 5:80-26.2, was replaced with a new definition of moderate-income household. The new definition has been added to these rules to match the UHAC rules.

Other non-UHAC related amendments to definitions are as follows:

"Distressed urban municipality" is no longer referenced in these rules and is deleted.

"Division" has been modified to reflect the reorganization that took place in 2003.

"Energy efficient housing unit," including the reference to Appendix G, which was never adopted, is deleted. Energy efficiency requirements will now be addressed in the proposed new Appendix M.

"Green building strategies" is added and replaces "sustainable development strategies," which is deleted, and amends the incorporation of Appendix H to proposed new Appendix M.

"Low-income census tract" has been added as reference for the new N.J.A.C. 5:43-3.7(a)1 and 2, and is consistent with the Legislature's revision to the Fair Housing Act at N.J.S.A. 52:27D-320(f).

"Preservation" has been added as it is now a term used within N.J.A.C. 5:43.

"Target area" is no longer referenced in these rules and is deleted.

N.J.A.C. 5:43-1.7 Maximum allowable project fees

This section has been repealed. The issue of project fees is incorporated into a broader section on eligibility requirements, N.J.A.C. 5:43-2.4, as described below. Eligible requirements provide a discussion of maximum allowable costs and maximum allowable fees. Subsection (a) is deleted because Appendix F is repealed and, therefore, its incorporation by reference is no longer necessary. Subsection (b) is recodified as N.J.A.C. 5:43-2.4(c) and amended as discussed in the Summary below. Subsection (c) is deleted because the amendments to new N.J.A.C. 5:43-2.4(c) (recodified from N.J.A.C. 5:43-1.7(b)) delete the maximum per unit developer fee, therefore, there is no longer a need for a waiver clause. Subsection (d) is deleted because the proposed new N.J.A.C. 5:43-2.4(c)2 allows for a two percent developer fee.

Subchapter 2. Funding

N.J.A.C. 5:43-2.1 Funding cycles and application procedures

This section and N.J.A.C. 5:43-2.2(b) and (c) have been amended to reflect the Department's intent to eliminate funding cycles for all project types.

N.J.A.C. 5:43-2.2 Allocation of funds

This section has been further amended to delete the limitation on Neighborhood Rehabilitation projects. Subsection (g) is deleted as it has been made obsolete by the Home Express program discussed in N.J.A.C. 5:43-3.4 below.

N.J.A.C. 5:43-2.3 Cost criteria

The section is proposed to be repealed and replaced with new rules. The proposed new rule is to rework costs from the current, per unit standard, to a more detailed standard based on eligible square foot construction cost that will vary by construction type.

The proposed new section, "Subsidy," creates, consolidates and revises several rules pertaining to the amount of subsidy for which projects are eligible. Existing N.J.A.C. 5:43-3.1(h)6, states that the Department will not provide funding in excess of \$4 million per project or in excess of \$75,000 average per unit subsidy. N.J.A.C. 5:43-3.1(h)6 is proposed to be relocated and amended as new subsection (a), which reflects the increase in the maximum amount per project to \$6 million, and the methodology for the subsidy, which is to be determined as set forth in N.J.A.C. 5:43-3.3 through 3.12. N.J.A.C. 5:43-3.1(h)1, 3 and 5, which pertain to the methodology for determining subsidy, have been relocated to N.J.A.C. 5:43-2.3(b). New N.J.A.C. 5:43-2.3(c) proposes that the Balanced Housing subsidy shall not exceed the gap between the actual cost of a project and all other available non-Balanced Housing subsidies and private financing.

Furthermore, proposed new subsection (d) precludes the use of the Department's HOME capital funding in Balanced Housing projects. Because the new rules allow "full funding" of a project through Balanced Housing, the addition of these HOME subsidies is not necessary and, if allowed, would only complicate the application, contracting and monitoring process. N.J.A.C. 5:43-3.1(j) which requires private financing to be maximized is relocated to N.J.A.C. 5:43-2.3(e) without change, and N.J.A.C. 5:43-3.1(k), a section requiring cost certification is relocated to N.J.A.C. 5:43-2.3(1).

N.J.A.C. 5:43-2.4 Review criteria

The review criteria discussed in existing N.J.A.C. 5:43-2.4 is structured around annual funding cycles. Because the funding cycles have been eliminated, review criteria are no longer relevant and the section is, therefore, being repealed.

N.J.A.C. 5:43-2.4 Eligibility requirements

This section will contain new, modified, consolidated rules pertaining to project eligibility. The entirely new funding approach for projects requires this new section that focuses on project costs and maximum allowable fees.

N.J.A.C. 5:43-2.4(a) sets forth the components contained within new maximum eligible construction costs. N.J.A.C. 5:43-2.4(b) requires Department review and certification of costs prior to the release of funds. Because the Department is now providing a "gap" rather than "per unit" subsidy, it is imperative that the Department verify all costs.

As discussed above, N.J.A.C. 5:43-1.7(b) is relocated as proposed new N.J.A.C. 5:43-2.4(c). The new subsection is amended to change "per unit amount" to "non-deferred amount" to include the waiver clause from N.J.A.C. 5:43-1.7(c), proposed for repeal, without substantive changing the combined subsections into one new subsection. New N.J.A.C. 5:43-2.4(c)1 and 2 establish the developer fee as a percentage of the eligible project costs, rather than the fixed amount contained in the existing rules. N.J.A.C. 5:43-2.4(d), (e) and (1) ensure that all new Balanced Housing units are in conformance with the requirements of the UHAC or the pertinent housing affordability controls with respect to income stratification and bedroom distribution, the Housing Adaptability Act, and Balanced Housing Green requirements, pursuant to new N.J.A.C. 5:43 Appendix M. N.J.A.C. 5:43-2.4(f) establishes minimum unit sizes for new units. The Department believes these standards are obtainable and necessary to ensure the habitability of the units. Requirements relating to eligible neighborhoods, financial and administrative requirements, income eligibility and relocations requirements, and site control have been relocated from N.J.A.C. 5:43-3.1(b), (c) and (g) to become N.J.A.C. 5:43-2.4(h), (i), and (j) respectively. N.J.A.C. 5:43-3.1(q), with respect to the requirement for site control has been amended to delete references to "neighborhood stabilization projects" and "acquisition/rehabilitation project" and is relocated to N.J.A.C. 5:43-2.4(k). Amendments to N.J.A.C. 5:43-3.1(r) change the emphasis in bedroom size from an issue of eligibility rather than funding. N.J.A.C. 5:43-2.4(1) changes Balanced Housing Green requirements from the

current \$7500 fixed subsidy per unit. The cost for green building strategies is included in the cost per square foot. The fixed subsidy no longer is relevant given the change in the funding approach for projects. N.J.A.C. 5:43-2.4(m) has been relocated from N.J.A.C. 5:43-3.1(t), fire suppression with no change. N.J.A.C. 5:43-2.4(n) has been relocated from N.J.A.C. 5:43-3.1(v). The language has been revised for sake of clarification, with no change in intent.

Subchapter 3. Funding Criteria

N.J.A.C. 5:43-3.1 General provisions

The section heading is proposed to be changed to "Grant and loan agreements." As noted above, much of this section will be moved to N.J.A.C. 5:43-2.3 and 2.4. The remaining sections are those that specifically address the provisions of the Department's grant and/or loan agreements.

Amendments to subsection (a) allow for the Department to delegate authority to an authorized designee for the purpose of distributing Balanced Housing funding for Home Express projects. Also, "grant and/or loan agreement" replaces "grant agreement," because funding to the developers of rental projects, when the municipality is not directly involved, and MLA funding (see N.J.A.C. 5:43-3.36) will generally be in the form of a loan. References to developer/sponsor contact discussed in N.J.A.C. 5:43-3.1(a) are made obsolete by inclusion of developers as eligible applicants as well as references to applicant capacity in N.J.A.C. 5:43-2.4(i), and are therefore deleted. N.J.A.C. 5:43-3.1(l) has been amended and relocated to N.J.A.C. 5:43-3.1(b) and (c) to address MLA projects. N.J.A.C. 5:43-3.1(d), (e), (f) and (p) address affordability issues now covered or superseded by the UHAC and therefore will be deleted. As discussed above, N.J.A.C. 5:43-3.1(h)1, 3, and 5 have been relocated to N.J.A.C. 5:43-2.3(b). N.J.A.C. 5:43-3.1(h)2 and 4, as well as N.J.A.C. 5:43-3.1(i) are made obsolete by the new funding method at N.J.A.C. 5:43-2.3(c) and are therefore deleted. N.J.A.C. 5:43-3.1(j) and (k) have been relocated to N.J.A.C. 5:43-2.3(e) and (f), respectively, as discussed above. The changes discussed above to N.J.A.C. 5:43-3.1(d) through (l) Recodify N.J.A.C. 5:43-3.1(m) and (n) as (d) and (e). Energy efficient units, currently found in N.J.A.C. 5:43-3.1(s), are included in the proposed Green requirements listed in proposed N.J.A.C. 5:43 Appendix M and discussed in N.J.A.C. 5:43-2.4(1) above, therefore, subsection (s) is proposed for deletion. As discussed above, N.J.A.C. 5:43-3.1(t) has been relocated to N.J.A.C. 5:43-2.4(m). N.J.A.C. 5:43-3.1(u) has been relocated to N.J.A.C. 5:43-3.1(a)3.

N.J.A.C. 5:43-3.2 Types of projects

Amendments to this list of projects are described in N.J.A.C. 5:43-3.3 through 3.14 below.

N.J.A.C. 5:43-3.3 Permanent housing for persons with handicaps projects

The section heading is amended and expanded to the more inclusive category of "Special Needs Trust Fund Projects." With the creation of the \$200 million Special Needs Trust Fund administered by the New Jersey Housing and Mortgage Finance Agency, it is proposed that all that all projects addressing this population be directed to the Trust Fund for funding. References to handicapped persons and eligible projects described in N.J.A.C. 5:43-3.3(a) are included in eligible projects funded by the Trust Fund. Therefore, references to handicapped persons and eligible projects are deleted and replaced with language that the Balanced Housing Program may provide funding for eligible applicants receiving funding under the Special Needs Housing Trust Fund. N.J.A.C. 5:43-3.3(b) is deleted for the same reasons subsection (a) is amended, and new subsection (b) sets forth the maximum funding previously applicable to projects for handicapped persons to reflect the greater resources now made available through the trust fund. Balanced Housing funding, under this section, will provide a one-to-five match of the trust fund subsidy.

N.J.A.C. 5:43-3.4 Rental projects

This section has been amended to reflect the proposed deletion of the funding charts, N.J.A.C. 5:43 Appendices B and C, in favor of "gap subsidy."

New subsection (d) requires that all rental projects must seek permanent financing from the HMFA. Requirements for the "Home Express" program are added, including: a complete package of financing including, Balanced Housing subsidy, low-income housing tax credits (LIHTCs) and mortgage financing. Home Express loans are provided through the New Jersey Housing and Mortgage Finance Agency.

N.J.A.C. 5:43-3.5 Two-family projects

The Department proposes to repeal this project option. The Department's experience with two-family projects is that it is difficult to ensure the statutory controls on two-family rental projects. As a result, the Department modified the program in 2002 to require the sponsor to take responsibility for such controls. The Department now finds that the model has not worked with regard to enforcement of affordability controls and conflicts with the current housing affordability controls (UHAC).

N.J.A.C. 5:43-3.6 Homeownership projects

This section will be recodified as N.J.A.C. 5:43-3.5. The types of projects described in subsections (b), (c) and (e) would be included by inference in the description of the project type here and elsewhere, and are considered superfluous, and are therefore deleted. Subsidy charts, N.J.A.C. 5:43 Appendices D and E, are deleted and language is added to reflect the proposed "gap subsidy" approach.

N.J.A.C. 5:43-3.6 Municipal land acquisition (MLA) projects

Proposed new N.J.A.C. 5:43-3.6 aims to provide municipalities funding to acquire land and/or develop affordable housing. The Balanced Housing subsidy serves as a bridge loan against the collection of future development fees. MLA loans will be at zero interest provided that the proposed housing is built within five years. The Department will discourage the "banking of land" by charging seven percent interest on the loan after the fifth year, until such time as the proposed project is completed. Any land acquired must be deed restricted for affordable housing.

N.J.A.C. 5:43-3.7 Acquisition/rehabilitation projects

This section has been repealed. The existing rule provided two types of projects related to the rehabilitation of existing housing. These included landlord projects and acquisition/rehabilitation projects. The new section, Preservation, acquisition, moderate rehabilitation projects, consolidates the two types of projects and still allows the Department to achieve its preservation goals, which drive the rationale for finding rehabilitation projects. With the increasing concern over the loss of affordable housing units as a result of expiring affordability controls, the Department proposes to focus its Balanced Housing resources on preserving the existing stock of affordable housing and ensuring its affordability for low and moderate income households. To achieve this goal, the Department developed this new major type of project category.

New subsection (a) sets forth that the program will provide funding for preservation and acquisition for the purposes of making affordable housing and for the moderate rehabilitation of existing units. New subsection (b) sets forth the requirements for sponsors of moderate rehabilitation. New subsection (c) sets forth a minimum percentage of the acquisition building that must be either vacant or occupied by a low or moderate income household. New subsection (d) sets forth that any repaired structure must be certified as "standard." New subsection (e) sets forth the amount of the subsidy limits, which are to be determined by an appraiser accepted by the Department, and sets forth the requirements to be "accepted by the Department." New subsection (f) sets a subsidy limit of \$50,000 per unit.

N.J.A.C. 5:43-3.8 Section 202, Section 811 and non-HOPE VI public housing new construction projects

The Department proposes to delete Section 811 projects from this section and to fund them as Special Needs Trust Fund Projects.

N.J.A.C. 5:43-3.9 Neighborhood rehabilitation projects

The proposed amendments to this section will increase the maximum funding for a neighborhood rehabilitation project from \$300,000 to \$500,000, and the required average rehabilitation from \$8,000 to \$10,000

per unit. The latter change is needed to ensure consistency with COAH requirements.

N.J.A.C. 5:43-3.10 Landlord projects

N.J.A.C. 5:43-3.10 is repealed and superseded by the new N.J.A.C. 5:43-3.7. See discussion at N.J.A.C. 5:43-3.7 above.

N.J.A.C. 5:43-3.11 Matching funds projects

N.J.A.C. 5:43-3.11, Matching funds projects is repealed, as it is now included within N.J.A.C. 5:43-3.14, recodified as N.J.A.C. 5:43-3.12.

N.J.A.C. 5:43-3.11 Distressed projects

N.J.A.C. 5:43-3.11, Distressed projects, is a proposed new project. The purpose of this new project type is to provide assistance to existing Balanced Housing projects facing extraordinary financial or capital issues. This program aims to restore such projects to and to ensure their ongoing viability. Subsections (b) through (d) describe applicant and project eligibility. Subsections (e) through (g) describe the terms of, conditions to, and requirements to receive funding. Subsection (h) describes the conditions under which an applicant for a distressed project may request an exception to the allowable annual rental increase.

N.J.A.C. 5:43-3.12 HOPE VI projects

This section has been recodified to 3.10. The maximum subsidy for HOPE VI projects will be increased from \$10,000 per unit, to \$40,000 per unit if the project were awarded prior to January 1, 2006 or \$25,000 per unit. The increase in subsidy for Hope VI project is an effort by the state to increase the amount of financial assistance to a federal sponsored initiative for which funding has become limited over the last few years. In order to ensure the best use of Balanced Housing funding, a new section (c) has been added to require HOPE VI applicants and the associated Housing Authorities to provide a comprehensive accounting of HOPE VI expenditures.

N.J.A.C. 5:43-3.13 Neighborhood stabilization and revitalization projects

These projects may be carried out under new N.J.A.C. 5:43-3.11, Distressed projects, therefore, this sections is repealed..

N.J.A.C. 5:43-3.14 Other projects

This section is recodified as N.J.A.C. 5:43-3.12 and is amended to include matching funds projects.

Subchapter 4. Affordability Controls

The existing chapter has been superceded by the Uniform Housing Affordability Controls (UHAC) and is, therefore, repealed.

N.J.A.C. 5:43-4.1 Uniform housing affordability controls

This new section references and requires conformance with UHAC.

N.J.A.C. 5:43-4.2 New Jersey Housing Resource Center

This new section requires that all Balanced Housing projects will be marketed through the New Jersey Housing Resource Center.

N.J.A.C. 5:43-4.3 Section 8 assistance

N.J.A.C. 5:43-3.1(o) has been relocated to create this new section.

N.J.A.C. 5:43 Appendices:

Chapter Appendices B through E, which referenced subsidy charts for various categories of housing based on tenancy and location, have been repealed as they are replaced with the new gap funding methodology, making them obsolete. Costs referenced in Appendix F, Contractor's Fee Schedule, are considered and included in the maximum per unit allowable costs. Therefore, this appendix has been repealed. Appendix G, Energy Efficient Unit/Energy Star, is repealed and superceded by the new Appendix M, Balanced Housing Green Requirements. Projects in Distressed Urban Municipalities have been included among eligible project types. The referring Appendix J has, therefore, been repealed. Maximum allowable soft costs are now calculated as a percentage of total construction cost and are detailed in the new Appendix L.

As the Department has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement, pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

Approximately 40 percent of New Jersey's population consists of households defined as low or moderate income. These households make up the demand for affordable housing. A depleting supply of developable land, rising land and construction costs continually limits supply. As supply is unable to meet or keep up with demand, the need for affordable housing exists. The need for affordable housing will continue to grow as New Jersey growth centers are developed, urban areas are redeveloped, and through natural population growth. Households attracted from the New York metropolitan and other surrounding areas increase demand and drive up prices for land and housing. The public will benefit because the State's ability to address the housing need is impacted by its ability to adapt to rapidly changing market conditions and to close the gap between the rapidly rising costs of land and construction.

According to the National Low Income Housing Coalition Out of Reach Report 2005 (which uses data from the U.S. Census), New Jersey has the fourth highest cost of housing in the nation. New Jersey's lack of affordable housing impacts many including key contributors to our State's economy and quality of life. Vital workers such as preschool teachers, nursing aids, security guards, home health aids, file clerks, and cashiers do not earn the minimum (\$43,409) needed to afford a standard two-bedroom rental unit. Their struggle to maintain their housing while securing childcare, healthcare, and transportation impacts all residents of the State.

Current methodologies regarding the calculation of funding subsidies, their limits, and application cycles have been repealed in favor of a more flexible cost driven approach that recognizes rapidly changing market conditions and increased costs. The new funding approach is more simplified with the goal of requiring fewer sources of funding. New rules are also added to coordinate Balanced Housing funding with HMFA funding for tax credit projects. Tax credits are the most substantial resource for developing affordable rental housing. The new Home Express program streamlines and simplifies the application for these funding sources. These changes in the way funds are allocated and coordinated will allow municipalities and developers the ability to meet more of the State's affordable housing need and meet that need more quickly than is possible under the current rule.

The Balanced Housing rules have additional public benefit in that the enclosed revisions seek to align Balanced Housing policies and regulations with other important State priorities. Revisions and expansion to requirements for energy efficiency promote and enhance state priorities designed to increase the quality of life, health and environmental benefits of green building. New rules emphasizing and coordinating funding to house eligible applicants under the Special Needs Housing Trust Fund reflect a new focus and commitment to the creation of housing for New Jersey's most vulnerable populations.

Economic Impact

The creation of high quality affordable housing in concert with sound local planning has been shown to stabilize marginal neighborhoods. Neighborhood stabilization leads to the attraction of additional private investment and enables local governments to attract and retain ratables. Rules relating to the acquisition, rehabilitation, and Landlord projects have been amended and consolidated, placing a new emphasis on the preservation of existing affordable housing and the acquisition of existing units to be made affordable to low and moderate income households in areas of low poverty. The preservation of high quality affordable housing costs significantly less than the creation of a new unit, which will ultimately reduce the cost to the State in meeting the housing need. On the regional level, the construction and preservation of quality affordable housing in economically stronger areas with greater proximity to jobs provides greater economic opportunities for low and moderate income households, reduces fuel consumption, and makes it easier for employers to attract a labor force.

Amendments that substantially increase the amount of available per unit subsidies will result in more households being served and increase the State's ability to serve households with lower incomes. The benefit to these families, being able to obtain affordable housing, is significant. According to the National Low Income Housing Coalition, 40 to 63 percent of New Jersey renters (depending upon location) cannot afford

their rent. An affordable home means more of a family's income can be spent on necessities such as food, utilities, or medication. For others, some measure of disposable income is created, further helping to stimulate the local economy.

Amendments to funding projects for handicapped persons streamline and coordinate funding to an expanded population of households with special needs. These amendments have the ability to achieve supplemental savings achieved through the increased provision of permanent affordable housing to vulnerable populations. For example, recent studies have shown that permanent affordable housing significantly reduces the cost to government in social service supports for homeless persons. There are no costs or fees associated with the proposed new rules, repeals or amendments.

Jobs Impact

The Balanced Housing rule revisions are a critical factor in reaching the State's goal of constructing or preserving 100,000 units over the next 10 years. These new units will result in the creation of new jobs. The National Association of Builders (in Housing Facts Figures and Trends 2004) estimates that approximately 2.4 jobs are created for each single-family housing unit (and one job for each multifamily unit) in construction and related industries.

Federal Standards Statement

No Federal standards analysis is required because the proposed new rules, amendments and repeals are not being proposed under the authority of Federal law or a State statute that incorporates or refers to Federal law, standards or requirements.

Agriculture Industry Impact

The Department does not anticipate that the proposed new rules, amendments or repeals would have any effect on the agriculture industry.

Regulatory Flexibility Analysis

The proposed new rules, amendments and repeals impose requirements on housing sponsors with regard to eligibility, cost criteria and affordability controls associated with the use of Balanced Housing funds. Many builders and housing sponsors would qualify as "small businesses," as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

No professional services are required in order to comply with the provisions of this chapter. The application process is so designed as not to be burdensome to a small business. Such recordkeeping, in order to substantiate applications, would be necessary for any builder or housing sponsor in the ordinary course of business. Any differential requirement for small businesses would result in unequal treatment of applicants and thus be in conflict with the requirements of N.J.A.C. 5:92.

At the same time, the proposed new rules, amendments and repeals seek to reduce reliance on multiple public sources of funds; create consistency with other State housing programs, regulations, and priorities; and create flexibility in the application of the program to changing market conditions and innovative project approaches. The aforementioned improvements created by the changes, in addition to the overall public benefits far outweigh the regulatory provisions imposed.

As discussed in the Economic Impact above, there are no fees or compliance costs with the proposed new rules, repeals and amendments. The rules do not impose new reporting requirements, although the rules as a whole do require recipients to provide financial and programmatic reports to the Departments.

Smart Growth Impact

These rules facilitate the development of affordable housing and thereby facilitate achievement of smart growth and implementation of the State Development and Redevelopment Plan.

Full text of the rules proposed for repeals may be found in the New Jersey Administrative Code at N.J.A.C. 5:43-1.7, 2.3, 2.4, 3.3, 3.5, 3.7, 3.10, 3.11, 3.13 and 4.1 through 4.10 and 5:43 Appendices A through G and I.

Full text of the proposed new rules, amendments and recodifications follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 1. GENERAL PROVISIONS

5:43-1.1 Purpose

The purpose of the Neighborhood Preservation Balanced Housing Program [shall be to assist in the delivery of housing affordable to low and moderate income households in viable neighborhood] **is to provide municipalities, for-profit and non-profit developers with financial assistance needed to spur the development of affordable housing across the State**, in conformance with the State Development and Redevelopment Plan and in fulfillment of Section 20 of the Fair Housing Act of 1985, as amended. **The Balanced Housing subsidy provides a critical source of gap financing for affordable housing projects whose other sources of public subsidy and private financing are not sufficient to sustain economic viability. The Program's subsidy formula is responsive to increases in the cost of land and construction. The Program is established to support the construction and preservation of permanent, high quality, location efficient affordable housing that meets the demand for units affordable to low and moderate income families and individuals residing in New Jersey.**

5:43-1.3 Eligible applicants

[(a) Municipal governments shall be eligible applicants to the Neighborhood Preservation Balanced Housing Program.]

[(b)] **(a) [Applications shall only be accepted from municipalities meeting] The Neighborhood Preservation Balanced Housing Program will accept program and project applications submitted by municipal governments, non-profit organizations and for-profit organizations, provided that the proposed program or project is located in municipality that meets at least one of the following criteria:**

1. The municipality has petitioned the Council on Affordable Housing for substantive certification **of its housing element**;

2. The municipality has received substantive certification **of its housing element from** the Council on Affordable Housing;

3. The municipality [has entered into] **is subject to** a judicially-approved compliance agreement to settle its fair share housing obligation;

4. (No change.)

5. The municipality has been designated as a receiving municipality under a regional contribution agreement and a project plan approved by the Council on Affordable Housing; [or]

6. The municipality [has, at any time since Fiscal Year 1988, been] **is eligible [to receive] for State aid pursuant to P.L. 1978, c. 14 (N.J.S.A. 52:27D-178 et seq.)** [;]; **or**

7. Any other municipalities provided that:

i. **The Council on Affordable Housing has invoked its authority pursuant to N.J.S.A. 52:27D-320(c); and**

ii **The municipality meets all conditions established by the Council in accordance with (a)7i above.**

(b) Programs and projects in any municipality shall be funded only after receipt by the Commissioner of a written statement in support of the program or project from the municipal governing body.

(c) Applicants that are eligible in accordance with [(b)1] **(a)1** above only shall not be eligible to receive program funding until the municipality's Fair Share Plan has received substantive certification from the Council on Affordable Housing.

(d) Applicants that are eligible in accordance with [(b)4] **(a)4** above, shall not be eligible to receive a funding commitment or program funding until the municipality's Fair Share Plan has been judicially approved by the issuance of a judgment of repose.

5:43-1.4 Eligible activities

(a) Eligible activities shall include those activities listed below:

1.-6. (No change.)

7. Other **related activities that produce housing** [programs] for low and moderate income housing including, **without limitation:**

i. [infrastructure] **Infrastructure** projects directly facilitating the construction of low and moderate income housing not to exceed a reasonable percentage of the construction costs of the low and moderate income housing[**to be provided.**]; **and**

ii. **Alteration of dwelling units occupied or to be occupied by households of low or moderate income and the common areas on the premises in which they are located in order to make them habitable for low and moderate income households with handicapped persons.**

(b) A proposed activity shall only be considered eligible if the units produced meet the criteria necessary at N.J.A.C. [5:93] **5:94** to qualify for credit from the Council on Affordable Housing.

(c) The required affordable portion of any mixed income/use development which is located in a non-urban aid municipality, **that is part of a COAH approved Fair Share Housing plan or a court approved judgment of repose or judgment of compliance**, shall not be eligible for Balanced Housing funding.

1. (No change.)

(d)-(e) (No change.)

5:43-1.5 Definitions

The following words and terms as used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

["Adjusted rent" means the base rent for a rental unit adjusted by the Index.]

"Administrative agent" means the entity responsible for enforcing the affordability controls or restricted units created pursuant to N.J.S.A. 52:27D-301 et seq.

"Affordable" means [capable of being afforded without undue burden by an eligible household. A rental unit shall be considered "affordable" if the monthly rent, including the estimated cost of utilities paid by the tenant, does not exceed 30 percent of an eligible household's income. Homeowner units shall be considered "affordable" if the monthly carrying costs, including principal and interest (based on a mortgage equal to 95 percent of the purchase price and a market rate of interest), taxes, homeowner and private mortgage insurance and condominium fees, do not exceed 28 percent of an eligible household's income. Except as modified in accordance with N.J.A.C. 5:43 3.1(h)4, in calculating the affordability of both homeowner and rental units the following occupancy is assumed: a studio is occupied by a one person household; a one bedroom unit is occupied by a one and one-half household; a two bedroom unit is occupied by a three person household; a three bedroom unit is occupied by a four and one-half person household; and a four bedroom unit is occupied by a six person household.] that the sales price conforms to the standards set forth in N.J.A.C. 5:80-26.6 and, that the rental price conforms to the standards set forth in N.J.A.C. 5:80-26.12. Where Federal funding is used in conjunction with Balanced Housing, the Federal program definition of "affordable" shall apply.

["Affordable housing agreement" means the written agreement between an owner of an affordable housing unit and the Department that imposes restrictions on units developed with funding from the Neighborhood Preservation Balanced Housing Program to ensure that those housing units remain affordable to households of low and moderate income for a specified period of time.]

"Age-restricted unit" means a housing unit designed to meet the needs of, and exclusively for, the residents of an age-restricted segment of the population where the head of the household is a minimum age of either 62 years, or 55 years and meets the provisions of 42 U.S.C. §§3601 et seq., except that due to death, a remaining spouse of less than 55 years of age shall be permitted to continue to reside.

... ["Applicant household" means a household that has submitted a Preliminary Application for an eligibility review.

"Assessments" means all taxes, levies, or charges, both public and private, including those charges by any condominium, cooperative or homeowner's association as the applicable case may be, imposed upon the affordable housing unit.]

"Balanced Housing Units" means those units within a project receiving Balanced Housing funds [which are subject to affordability controls in accordance with N.J.A.C. 5:43-4 or a mortgage in accordance with N.J.A.C. 5:43-4 regardless of whether such controls or mortgages are waived or modified].

["Base price" means the initial sales price of a unit designated as owner-occupied affordable housing and restricted by affordability controls.

"Base rent" means the monthly charge established for a rental unit at the time the unit is first restricted by affordability controls.]

... "Certified household" means [any eligible household whose total gross annual income has been verified, whose financial resources have been approved and who has received certification as a low or moderate income-eligible household for referral to an affordable housing unit] **a household that has been certified by an administrative agent as a low-income household or moderate-income household.**

"Community housing development organization (CHDO)" means a private, non-profit organization that serves a specific neighborhood or geographic area, has as a primary purpose the creation of affordable housing, and is in compliance with the requirements set forth in the Federal HOME Program regulations at 24 CFR §92.2.

["Closing costs" means those costs of a real estate sale that are incurred by the buyer and seller at the time of sale including, but not limited to attorney's fees, mortgage points, real estate transfer fee, and applicable real estate broker fees.]

... ["Distressed urban municipality" means a municipality which is eligible for State aid pursuant to P.L. 1978, c.14 (N.J.S.A. 52:27D-178 et seq.) and is within the first 50 most distressed municipalities in accordance with the Municipal Distress Index as maintained and published by the Office of State Planning. A list of these municipalities is included in chapter Appendix J, incorporated herein by reference.]

"Division" means the Division of Housing [and Community Resources] in the Department of Community Affairs.

["Eligible Household" means a household whose preliminary application has been reviewed, whose unverified estimated total gross annual income is judged to be low or moderate income pursuant to applicable guidelines, and whose name has been placed on a referral list for affordable housing.]

... ["Energy efficient housing unit" means a housing unit that achieves 86 points or more on the Home Energy Rating Scale (HERS) or is certified as an "Energy Star Home" by an accredited home energy rater. See chapter Appendix G, incorporated herein by reference.]

... ["First money mortgagee" means the holder and/or assigns of the first money mortgage which must also be an institutional lender or investor, licensed or regulated by a State or Federal government or an agency thereof.

"Foreclosure" means the termination through legal processes of all rights of the mortgagor or the mortgagor's heirs, successors, assigns or grantees in a restricted Affordable Housing unit covered by a recorded mortgage.]

["Gross annual income" means the total calculated amount of a household's income from all sources including, but not limited to, salary, wages, regular overtime, interest, dividends, alimony, child support, pensions, social security, unemployment, disability, business income and capital gains, tips and welfare benefits. Income is calculated based on a weekly, bi-weekly, semi-monthly, or monthly figure that is effective at the time of the certification interview and estimated for a 12-month period.

"Gross rent" means the total cost of a rental unit to a certified household when a tenant-paid utility allowance is added to the base rent.

"Household" means the person or persons occupying a housing unit.

"Index" means the measured percentage of change in the median income established for a household of four by geographic region using the applicable median income guide published periodically by the U.S. Department of Housing and Urban Development as blended by COAH region and approved for use by the N.J. Council on Affordable Housing. For rental units, "Index" means the Consumer Price Index for Housing as published monthly by the U.S. Department of Labor Statistics and approved for use by the Council on Affordable Housing. For rental units receiving Low Income Housing Tax Credits, "Index" means the measured percentage of change in the capped Section 8 Income Limits

published periodically by the U.S. Department of Housing and Urban Development.]

"Green building strategies" means those strategies that minimize the impact of development on the environment, and enhance the health, safety and well-being of the residents by producing durable, low-maintenance, energy efficient housing and making optimum use of existing infrastructure. (See Chapter Appendix M, incorporated herein by reference, for further details.)

"Home Investment Partnerships Program (HOME)" means the Federal funds allocated by the U.S. Department of Housing and Urban Development (HUD) which are administered by the Department to support the production of affordable housing. Program activity funded by HOME must be consistent with the HUD approved Consolidated Plan for the State of New Jersey.

"Low income census tract" means the median household income is 60 percent or less of the median income for the housing region in which the census tract is located, as determined for a three-person household by the Council on Affordable Housing, in accordance with the latest Federal decennial census.

"Low-income household" means a household whose gross annual income is equal to 50 percent or less of the median [gross] income [established by geographic region and household size using income figures and family size adjustment methodology published periodically in the Federal Register by the U.S. Department of Housing and Urban Development and approved for use by the Council on Affordable Housing] for the housing region as set forth by the Council on Affordable Housing, N.J.A.C. 5:94 Appendix A.

"Market rate units" means housing that may sell at any price determined by a willing seller and a willing buyer.

"Moderate-income household" means a household whose gross annual income is [equal to more than] in excess of 50 percent but less than 80 percent of the median [gross] income [established by geographic region and household size using income figures and family size adjustment methodology published periodically in the Federal Register by the U.S. Department of Housing and Urban Development and approved by the Council on Affordable Housing] for the housing region, as set forth by the Council on Affordable Housing, N.J.A.C. 5:94 Appendix A.

"Owner" means the title holder of record as reflected in the most recently dated and recorded deed for the particular affordable housing unit.]

"Price Differential" means the total amount of the unrestricted sales price that exceeds the maximum restricted resale price as calculated by the Index. The unrestricted sales price shall be no less than a comparable fair market price as determined by the Division at the time a Notice of Intent to Sell has been received from the owner.

"Primary Residence" means the unit wherein a certified household maintains continuing residence for no less than nine months each calendar year.

"Purchaser" means a certified household who has signed an agreement to purchase an affordable housing unit subject to a mortgage commitment and closing.]

"Preservation" means a subsidy granted to an existing affordable housing project with expiring controls, in order to extend the period of affordability.

"Renter" means a household who has been certified for an affordable housing unit for rent subject to the signing of a lease and the payment of any required security deposit.]

"Rent" means the gross monthly cost of a rental unit to the tenant, including the rent paid to the landlord, as well as an allowance for tenant-paid utilities computed in accordance with allowances published by the Department for its Section 8 Program. With respect to units in an assisted-living residence, rent does not include charges for food and services.

"Repayment lien" means the second mortgage and note signed by the owner that is given to the Division as security for the payment of 95

percent of the price differential generated by the first non-exempt sale of an affordable housing sales unit at the time of closing and transfer of title of the property after the ending date established in the Affordable Housing Agreement.

"Resale price" means the base price as adjusted by the Index. The resale price may also be adjusted to accommodate an approved home improvement. In the case of central air conditioning installed after the initial sale, the adjustment shall be the cost of the unit installed minus 1/120 of that cost for each month of use up to the end of the tenth year.]

"Senior Citizen" means any person age 62 years or older.]

"Sustainable development strategies" means those strategies which minimize the impact of housing developments on the environment, provide building designs which enhance the health safety and well-being of the residents, providing durable, low-maintenance housing and make optimum use of exiting infrastructure. (See chapter Appendix H, incorporated herein by reference, for further details.)]

"Target areas" means those geographic areas or neighborhoods that have been designated by the Governor, Commissioner and/or the State Planning Commission as locations appropriate for intensive redevelopment. For example, designated Empowerment Zones and Enterprise Communities; areas formally designated by the State Planning Commission as State Plan centers and those communities that have an endorsed Strategic Revitalization Plan; designated neighborhoods within municipalities participating in the Department's Strategic Neighborhood Assistance Programs; designated areas within municipalities selected by the Governor's Urban Coordinating Council to enter into a partnership with the State to organize and implement strategic revitalization plans; and municipalities that have adopted a neighborhood-based strategic community revitalization plan that addresses the specific needs of a neighborhood.]

"Uniform Housing Affordability Controls" or "UHAC," found at N.J.A.C. 5:80-26, regulates the means, methods, and duration to preserve the affordability of low and moderate income units created under the New Jersey Fair Housing Act (N.J.S.A. 52:27D-301 et seq.).

5:43-2.1 Funding cycles and application procedures

[With the exception of applications for Neighborhood Rehabilitation projects (see N.J.A.C. 5:43-3.9), the] The Department shall accept applications on a continuous basis.

5:43-2.2 Allocation of funds

(a) (No change.)

[(b) For funds which are not set aside by the Commissioner, the Department shall conduct four competitive funding cycles as follows:

1. Tax credit cycle. Only projects, which are also applying for Low Income Housing Tax Credits in the spring allocation cycle shall be considered during this round. The application deadline and funding announcement dates shall coincide with the tax credit allocation dates. If there is an additional application cycle for Low Income Housing Tax Credits, the same timing shall apply.

2. Summer cycle. Applications received by August 15 shall be considered for funding on or about October 31.

3. Fall cycle. Applications received by November 15 shall be considered for funding on or about January 31.

4. Final cycle. Applications received by March 15 shall be considered for funding on or about May 31.

5. In cases where delaying funding until the next cycle would prevent the project from going forward, the Commissioner shall have the discretion to fund projects at any time.

6. During each funding cycle, applications which are not funded shall be carried forward if they meet the criteria necessary to be funded or rejected if they do not. If carried forward, applicants shall be notified that their application shall be considered during the next funding cycle.

(c) The distribution of funds to each cycle shall be at the discretion of the Commissioner.]

[(d) All] (b) Balanced Housing funds shall be allocated to municipalities on behalf of specific projects. In the event that the project does not proceed within the time specified in the Grant Agreement, the funds shall be

reallocated by the Department. The prior allocation shall have no effect on the reallocation of captured funds.

[(e)] (c) (No change in text.)

[(f)] Neighborhood rehabilitation projects shall be funded only within designated neighborhoods specified in this section or in municipalities in which Balanced Housing funds would be used to support activities funded by other Division programs.

(g) Any Balanced Housing application for a project which is being submitted concurrently to the New Jersey Housing and Mortgage Finance Agency (NJHMFA) for low income housing tax credits must contain project information which is consistent with the application which is being submitted to NJHMFA for the tax credits. Any material difference between the applications shall result in the Balanced Housing application being denied.]

5:43-2.3 Subsidy

(a) The Department will provide funding to a maximum of \$6 million per project. The methodology for determining the maximum Balanced Housing subsidy is set forth in N.J.A.C. 5:43-3.3 through 3.12 for each type of project.

(b) The Commissioner may, at his or her discretion, award less than the maximum subsidy, structure the assistance as a secured loan, with or without interest, or provide additional assistance for short-term financing, including construction and/or bridge loans, if needed, to ensure project feasibility.

1. The Department reserves the right, based on the size and design of the units, to restrict the size of a household that will occupy the unit and to provide funding in accordance with the reduced household size.

2. The Department may, at its discretion, reduce the maximum subsidy if an analysis of the construction design and specifications determines that essential function can be preserved at a lower cost.

(c) The Balanced Housing subsidy shall not exceed the gap between all other capital sources, including, but not limited to, permanent debt and any monetary incentive or rebate received for participation in the New Jersey Board of Utilities, Clean Energy Program, and the actual project cost, or, for new units, the maximum eligible project cost as determined in subsection N.J.A.C. 5:43-2.4(a).

1. Applicants shall demonstrate that other subsidies have been maximized, including, but not limited to, the Federal Home Loan Bank Board's Affordable Housing Program, local development fees and regional contribution agreements.

(d) Funding provided in accordance with this chapter may not be combined with other programs that also provide subsidies, either directly or indirectly, from the Neighborhood Preservation Nonlapsing Revolving Fund or with any HOME CHDO or HOME Investment Partnerships Program subsidy (24 CFR §Part 92), provided by the Department.

(e) Balanced Housing funding shall not be used as a substitute for private financing where the latter is feasible and attainable.

(f) The developer must submit a detailed estimate of project funding and project costs and, upon project completion of construction and prior to project close out, a certification by a certified public accountant of actual project funding and project costs. The Department reserves the right to conduct an independent audit of final project costs.

5:43-2.4 Eligibility requirements

(a) The maximum eligible project costs for new units shall be the sum of the components listed in (a)1 through 5 below:

1. The maximum eligible construction cost, including contingency, shall be the lesser of the actual construction cost or the amount calculated as set forth below:

i. For single family detached: \$105.00 per square foot plus \$30.00 per square foot for a full basement;

ii. For townhouse, rowhouse or semi-detached: \$117.00 per square foot plus \$30.00 per square foot for a full basement;

iii. For one to three story multifamily, non-elevator buildings: \$138.00 per square foot;

iv. For two to six story multifamily, elevator buildings: \$143.00 per square foot;

v. For seven or more story multifamily buildings: \$182.00 per square foot;

vi. For projects required to provide a parking garage, the eligible construction cost may be increased by \$15,000 for each parking space, not to exceed one space per unit, provided exclusively for, and without charge to, the low and moderate income tenants; and

vii. The cost of approved green building strategies;

2. The costs listed in (a)1 above may be increased, annually, based on the percentage increase in the Housing Consumer Price Index, as published by the United States Department of Labor, and will be published as a Notice of Administrative Change in the New Jersey Register.

3. The maximum allowable eligible soft costs shall be the lesser of the actual amount or 28 percent of eligible construction cost, as calculated in (a)1 above. A list of those costs considered soft costs is provided in Chapter Appendix L, incorporated herein by reference;

4. The maximum eligible acquisition cost shall be the lesser of the actual cost or the amount identified in an appraisal performed within 180 days of the date of the application to the Program. This appraisal must be conducted by an individual or firm approved by the Department.

i. Initially, the Department will utilize the New Jersey Housing and Mortgage Finance Agency for the selection and procurement of appraisers, until an equivalent system can be replicated at the Department. Cost for the appraisal will be born by the applicant.

ii. To be considered for approval, the appraiser must apply to the Agency, and the application shall include the information required, or demonstrate that the appraiser has the experience, as follows:

(1) The completion of appraisals similar to the types of projects funded by the Agency and the Department;

(2) The counties they have done work in and wish to be considered for;

(3) Names and addresses of references;

(4) A copy of the appraisers current New Jersey Appraiser License;

(5) A Signed acknowledgement of the Code of Ethics and Mandatory Affirmative Action;

(6) A current copy of the appraisers Errors and Omission policy; and

(7) Sample appraisals for every type of work they seek.

iii. An appraiser review committee of three reviews all applications and sample appraisals, and if deemed to have sufficient experience and accepted, the appraiser goes on a computerized rotating selection list;

5. The actual cost of LIHTC allocation and reservation fees, construction supervision, if pursuant to N.J.A.C. 5:43-3.1(a)3, capitalized reserve accounts and other costs provided that such other costs are approved by the Department; and

6. A developer fee, calculated as no more than eight percent of (a)1 and 2 through 5 above.

(b) The Division will review and certify costs prior to the release of funds.

(c) The maximum non-deferred amount, which may be taken out of the project as developer fee shall be calculated as follows:

1. For projects that create new units, eight percent of the eligible project cost as determined in (a) above; or

2. For projects that involving the acquisition, preservation, moderate rehabilitation of existing units, or any combination thereof, two percent of approved development cost.

(d) Projects providing new units pursuant to N.J.A.C. 5:43-3.4(a), 3.5 or 3.6 shall conform with Uniform Affordability Housing Controls as set forth at N.J.A.C. 5:80-26.

(e) All projects must be handicap adaptable, in compliance with the technical design standards of the barrier free subcode adopted by the Commissioner of Community Affairs pursuant to the "State Uniform Construction Code Act," P.L. 1975, c. 217 (N.J.S.A. 52:27D-119 et seq.) and in accordance with the provisions of P.L. 2005, c. 350 §5 (N.J.S.A. 52:27D-123.15).

(f) The minimum size excluding exterior hallways, garages, common space and unfinished space, for new Balanced Housing units shall be:

1. For studio units: 550 square feet;
2. For one bedroom units: 600 square feet;
3. For two bedroom units: 850 square feet;
4. For three bedroom units: 1150 square feet; and
5. For four bedroom units: 1250 square feet.

(g) Each new unit funded shall contain at least one bedroom with no less than 150 square feet.

1. Each additional bedroom shall be no less than 100 square feet.
2. Each single-room occupancy unit shall be no less than 100 square feet.

(h) Eligible neighborhoods. All projects proposed for funding must be in an eligible neighborhood. Applicants shall be required to demonstrate that the neighborhood is appropriate for the population to be served.

(i) Applicants to the Balanced Housing Program will be required to demonstrate their ability, both administrative and financial, to develop and manage the proposed project.

1. The qualifications and experience with respect to the development, marketing and, where relevant, the long-term management of affordable housing of key participants, including, but not limited to, the sponsor/developer, management entity, consultant, administering agent and the municipality, will be examined.

i. Failure by any of the participants to comply with the program requirements in projects previously funded by the Department, including, but not limited to, failure to pay the Housing Affordability Service, or failure to make required loan payments to the Department, shall be grounds for disqualifying an application and/or a participant.

ii. The association of any of the key participants with other projects which are experiencing either operating difficulties or delays in development shall be grounds to deny the application or to carry it forward until such time that the problems are corrected.

2. Participants lacking the qualifications necessary to carry out the project will be encouraged to joint venture with individuals/groups that can provide these qualifications.

(j) Rehabilitation of occupied units: If a sponsor/developer is undertaking reconstruction and one or more of the units is currently occupied, the occupied unit(s) shall be eligible only if the household occupying the unit is certified to be income eligible. If any current occupants will be relocated, this action must be completed in accordance with an approved Workable Relocation Assistance Plan (WRAP), pursuant to N.J.S.A. 20:4-1 et seq. and 52:31B-1 et seq.

(k) All applicants shall demonstrate control of the project site by holding title, by a sales contract, by an option to purchase, or by designation from the municipality as designated developer.

(l) All projects shall conform with the Balanced Housing Green Building Requirements pursuant to chapter Appendix M.

(m) Every building containing new Balanced Housing units shall be provided with an automatic fire suppression system. Such systems shall include the entire building and shall be installed in accordance with the Uniform Construction Code.

(n) All projects shall be appropriate to the site or the immediate neighborhood within which it is to be built or rehabilitated.

5:43-3.1 [General provisions] Grant and loan agreements

(a) Successful applicants to the Neighborhood Preservation Balanced Housing Program shall be invited to enter into a grant and/or loan agreement with the Department[,] or its designee. The Department may delegate the authority to enter into an agreement for Balanced Housing loans to the New Jersey Housing and Mortgage Financing Agency for Home Express loans, in accordance with N.J.A.C. 5:43-3.4(e).

[1. Upon the request of an applicant, the Department may, at its sole discretion, contract directly with a sponsor/developer of a proposed project. The decision of the Department to contract directly with sponsor/developer shall be based on evidence that doing so shall enhance project feasibility and a determination that the sponsor/developer has

sufficient capacity to carry out all administrative, financial and other requirements of the grant agreement.]

[2.] 1. The terms and conditions of any grant agreement shall be at the sole discretion of the Department or its designee for Home Express loans, in accordance with N.J.A.C. 5:43-3.4(e).

[3.] 2. Balanced Housing grant and/or loan agreements with municipalities shall include provision(s) prohibiting the municipality from selling tax liens on the subject property prior to the closeout of the agreement.

3. The Department reserves the right, at its sole discretion, to require on site construction supervision to ensure successful project conception and compliance with all applicable agencies and funders that have jurisdiction over and/or material interest in the project.

[(b) All projects proposed for funding must be in an eligible neighborhood. Applicants shall be required to demonstrate that the neighborhood is appropriate for the population to be served.

(c) Applicants to the Balanced Housing Program will be required to demonstrate their ability, both administrative and financial, to develop and manage the proposed project.

1. The qualifications and experience with respect to the development, marketing and, where relevant, the long term management of affordable housing of key participants, including, but not limited to, the sponsor/developer, management entity, consultant, administering agent and the municipality, will be examined.

i. Failure by any of the participants to comply with the program requirements in projects previously funded by the Department, including, but not limited to, failure to pay the Housing Affordability Service or failure to make required loan payments to the Department, shall be grounds for disqualifying an application and/or a participant.

ii. The association of any of the key participants with other projects which are experiencing either operating difficulties or delays in development shall be grounds to deny the application or to carry it forward until such time that the problems are corrected.

2. Participants lacking the qualifications necessary to carry out the project will be encouraged to joint venture with individuals/groups that can provide these qualifications.

(d) At least 50 percent of the low and moderate income units to be funded shall be affordable to low income households. The following are exempt from that requirement:

1. Homeownership projects, which are located in distressed urban municipalities and are not part of a Regional Contribution Agreement;
2. Neighborhood rehabilitation projects;
3. Two-family projects;
4. Rental rehabilitation projects; and
5. Neighborhood stabilization/revitalization projects.

(e) Except as noted in N.J.A.C. 5:43-4.2(a) and (b), Balanced Housing funding recipients shall contract with the Housing Affordability Service (HAS) or a private entity approved in accordance with N.J.A.C. 5:43-4(b)4 and 5 in order to monitor affordability controls. If a recipient elects not to use HAS, any fees charged in excess of those which would have been charged by HAS shall be borne by the developer.

(f) Any new units funded through the Balanced Housing Program must remain affordable for the time period which is required by N.J.A.C. 5:93-9.2.

(g) If a sponsor/developer is undertaking reconstruction and one or more of the units is currently occupied, the occupied unit(s) shall be eligible only if the household occupying the unit is certified to be income eligible. If any current occupants will be relocated, this action must be completed in accordance with an approved Workable Relocation Assistance Plan (WRAP), pursuant to N.J.S.A. 20:4-1 et seq. and 52:31B-1 et seq.

(h) The methodology for determining the maximum Balanced Housing subsidy is explained in N.J.A.C. 5:43-3.3 through 3.14 for each type of project.

1. The Commissioner may, at his or her discretion, award less than the maximum subsidy, structure the assistance as a secured loan, with or without interest, or provide additional assistance for short term financing, including construction and/or bridge loans, if needed, to ensure project feasibility.

2. In addition to the maximum subsidies described in N.J.A.C. 5:43-3.3 through 3.14, the Department may provide up to \$7,500 per unit for approved sustainable development strategies, up to \$500.00 per unit to cover the cost of HAS services and up to the amount required to provide automatic fire suppression, provided that the cost is verified by the Department and does not exceed \$2.00 per square foot.

3. The Department reserves the right, based on the size and design of the units, to restrict the size of a household that will occupy the unit and to provide funding in accordance with the reduced household size.

4. Units which are set aside for occupancy exclusively by senior citizens shall be funded as one bedroom or, where applicable, as studio/SRO units, regardless of the actual number of bedrooms.

5. The Department may, at its discretion, reduce the maximum subsidy if an analysis of the construction design and specifications determines that essential function can be preserved at a lower cost.

6. Notwithstanding the sum of the maximum subsidies as determined in this chapter, the Department will not provide funding in excess of \$4 million per project or in excess of \$75,000 average per unit subsidy.

(i) The amount of Balanced Housing funds reserved for a project shall be based on the information provided in the application and shall fund only the gap between project cost and other revenue.

1. The Department shall also take into account the following factors in determining the amount of subsidy:

i. Whether there is any other source of funds which can be used to undertake this activity. The Department expects the applicant to use all possible private resources and non-Balanced Housing subsidies; and

ii. Whether the project can be achieved without Balanced Housing subsidy.

iii. Notwithstanding (i)1i and ii above, the Department shall not penalize any application in which the municipality has pledged funds in accordance with N.J.A.C. 5:93-5.5(a)3ii.

(j) Balanced Housing funding shall not be used as a substitute for private financing where the latter is feasible and attainable.

(k) The developer must submit a detailed estimate of project funding and project costs and, upon project completion of construction and prior to project close out, a certification by a certified public accountant of actual project funding and project costs. The Department reserves the right to conduct an independent audit of final project costs.

(l) In all instances, Balanced Housing funds will be awarded to the municipality as a grant. The municipality shall provide the Balanced Housing funds for a rental unit to the developer as a loan. All such loans shall be secured by a mortgage and a note, which shall be repayable to the Department. All terms and conditions of the loan documents shall be subject to the approval of the Department. With the exception of neighborhood rehabilitation, rental rehabilitation and two-family projects, the following shall apply:

1. The length of the loan shall not exceed the affordability period;
2. The interest rate shall be one percent compounded annually;
3. Payment shall equal 50 percent of cash flow, paid annually, with any balance due upon expiration of affordability controls; and
4. The Department, at its discretion, may independently audit the project records to verify income and expense.]

(b) With the exception of municipal land acquisition projects, where Balanced Housing funds are awarded to a municipality, those funds will be awarded to the municipality as a grant. The municipality shall provide the Balanced Housing funds for a rental project to the developer as a loan.

(c) All loans to a rental project shall be secured by a mortgage and a note, which shall be repayable to the Department. All terms and conditions of the loan documents shall be subject to the approval of the Department or its designee. The following terms shall apply:

1. The length of the loan shall not exceed the affordability period;
2. The interest rate shall be one percent compounded annually;
3. Payment shall equal 50 percent of cash flow, paid annually, with any balance due upon expiration of affordability controls; and
4. The Department or its designee, at its discretion, may independently audit the project records to verify income and expense.

Recodify existing (m) and (n) as (d) and (e) (No change in text.)

[(o) A household receiving assistance under Section 8 of the Federal Housing Act of 1937, as amended by the Housing and Community Development Act of 1974, shall be eligible for housing under the Balanced Housing Program, provided, however:

1. The household meets all requirements for the Balanced Housing Program; and

2. The combined household rental payment and housing assistance payment shall not exceed that provided for in the Balanced Housing grant agreement.

(p) The average range of affordability for units funded shall not exceed 57.5 percent for any project located in a distressed urban municipality, 55 percent for all other homeownership projects, or 52 percent for all other rental projects.

(q) With the exception of neighborhood rehabilitation projects, neighborhood stabilization/revitalization projects and acquisition/rehabilitation projects, all applicants shall demonstrate control of the project site by holding title, by a sales contract, by an option to purchase, by designation from the municipality as designated developer or by any other means, which the Division Director may approve.

(r) For all purposes related to funding and occupancy of units, with the exception of SRO units, each unit funded shall contain at least one bedroom with no less than 150 square feet.

1. Each additional bedroom shall be no less than 100 square feet.

2. Each SRO unit shall be no less than 100 square feet.

(s) Every new unit that receives Balanced Housing subsidy shall qualify as an Energy Efficient Housing Unit.

(t) Every building containing new Balanced Housing units shall be provided with an automatic fire suppression system. Such systems shall include the entire building and shall be installed in accordance with the Uniform Construction Code.

(u) The Department reserves the right, at its sole discretion to require on site construction supervision.

(v) The Department reserves the right, at its sole discretion, to reject any project the design for which it deems inappropriate to the site or the immediate neighborhood within which it is to be built or rehabilitated.]

5:43-3.2 Types of projects

(a) The Department shall only fund projects falling into at least one of the following categories:

1. [Permanent housing for persons with handicaps] **Special Needs Trust Fund** projects, described in N.J.A.C. 5:43-3.3;

2. (No change.)

[3. Two-family projects, described in N.J.A.C. 5:43-3.5;]

[4.] 3. Homeownership projects, described in N.J.A.C. 5:43-[3.6]3.5;

4. Municipal land acquisition projects, described in N.J.A.C. 5:43-3.6;

5. [Acquisition/rehabilitation,] **Preservation, acquisition, and moderate rehabilitation** projects, described in N.J.A.C. 5:43-3.7;

6. Section 202 [, Section 811] and non-HOPE VI public housing new construction projects, described in N.J.A.C. 5:43-3.8;

7. Neighborhood rehabilitation projects, described in N.J.A.C. 5:43-3.9;

8. [Landlord] **HOPE VI** projects, described in N.J.A.C. 5:43-3.10;

9. [Matching funds] **Distressed** projects, described in N.J.A.C. 5:43-3.11; and

[10. HOPE VI projects, described in N.J.A.C. 5:43-3.12;

11. Neighborhood stabilization/revitalization projects, described in N.J.A.C. 5:43-3.13; and]

[12.] 10. Other projects, described in N.J.A.C. 5:43-[3.14]3.12.

5:43-3.3 [Permanent housing for persons with handicaps] **Special Needs Housing Trust Fund** projects

(a) The Balanced Housing Program may provide funding for [the construction, reconstruction, or conversion of units that will provide permanent housing for income eligible households which contain one or more persons with a handicap.

1. Eligible projects may include, but are not limited to, residential health care facilities as regulated by the New Jersey Department of Health; group homes for the physically and/or developmentally disabled and mentally ill as licensed and/or regulated by the New Jersey Department of Human Services; and congregate living arrangements]

eligible applicants to assist projects receiving funding from the Special Needs Housing Trust Fund established by P.L. 2005 c. 163.

[(b) In such projects, the form and amount of Balanced Housing assistance shall be at the discretion of the Department, but shall not exceed the lesser of \$50,000 per bedroom or 50 percent of total project cost]

(b) The maximum assistance to such projects shall not exceed 20 percent of the total project cost or the capitalized cost of a rental subsidy for up to 10 years.

5:43-3.4 Rental projects

(a) The Balanced Housing Program may provide assistance to eligible applicants [for use by for-profit or not-for-profit housing sponsors who] to provide new rental housing units for occupancy by low and moderate income households. Eligible activities shall include new construction, reconstruction and the conversion of non-residential structures.

1. (No change.)

(b) The maximum allowable subsidy for a rental [unit] project shall be [determined in accordance with Appendix B to this chapter if the project is located in a distressed urban municipality or in accordance with Appendix C of this chapter for all other projects] the amount needed to ensure project feasibility in accordance with N.J.A.C. 5:43-2.3.

(c) (No change.)

(d) Applicants for rental housing projects must apply to the New Jersey Housing and Mortgage Finance Agency for permanent financing.

(e) Applicants may apply directly to the New Jersey Housing and Mortgage Finance Agency (Agency) for a combination of LIHTCs, permanent and/or construction financing and Balanced Housing assistance. For such applications, the Agency will act as the Department's designee with respect to the Balanced Housing assistance provided, hereinafter referred to as "Home Express" loans.

1. Any loan agreement entered into for Home Express funds shall incorporate contractual guarantees and procedures to ensure that any unit of housing provided for low and moderate income households shall continue to be occupied by, and affordable to, low and moderate-income households for at least 20 years.

2. Projects receiving Home Express loans are exempt from the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26, including affordability averages and bedroom distribution requirements.

3. Projects receiving Home Express loans shall be exempt from N.J.A.C. 5:43-2.4(a), provided however that the Agency will require applicants to substantiate and justify project costs.

4. Except as noted in (e)5 and 6 below, the maximum Home Express loan for a project shall be \$40,000 per unit for projects receiving competitive cycle tax credits or \$50,000 for projects receiving non-competitive cycle tax credits.

5. Additional Home Express loan amounts may be approved for projects providing new rental units affordable at or below a 30 percent range of affordability.

6. Home Express loans may be increased by up to \$2.00 per square foot to cover the costs of automatic fire suppression systems that are not required by the local municipal building code but are required by N.J.A.C. 5:43-2.4(m).

5:43-[3.6]3.5 Home ownership projects

(a) The Balanced Housing Program may provide assistance to eligible applicants [for use by for-profit and not-for-profit housing sponsors who] to provide homeownership opportunities to low and moderate income households through new construction, reconstruction or the conversion of non-residential structures.

1. (No change.)

[(b) Qualifying units must be new and must be sold at affordable prices.

(c) Condominium and cooperative as well as fee simple ownership forms are eligible.]

[(d)] (b) The maximum subsidy for homeownership projects shall be [determined in accordance with Appendix D to this chapter, incorporated herein by reference, if the project is located in a distressed urban municipality or in accordance with Appendix E, incorporated herein by

reference, for all other projects] the amount needed to ensure project feasibility in accordance with N.J.A.C. 5:43-2.3.

[(e) Applicants may combine a homeownership project with a rental project.]

[(f)] (c) (No change in text.)

5:43-3.6 Municipal land acquisition (MLA) projects

(a) The Balanced Housing Program may provide assistance to eligible municipalities, as defined in N.J.A.C. 5:43-1.3 and (b) below, to acquire land and/or any other eligible activity, for the purpose of providing future affordable housing.

(b) Eligible municipalities must meet the requirements listed in 1 through 3 below:

1. The municipality must have adopted a development fee ordinance approved either by the Superior Court or by the New Jersey Council on Affordable Housing (COAH) in accordance with N.J.A.C. 5:94-6;

2. The proposed project is contained within a COAH approved Fair Share Plan or court-approved compliance agreement; and

3. The municipality is in compliance with all reporting requirements of COAH or the Superior Court.

(c) Land acquired through this program must be restricted, at the time of purchase to affordable housing only, in accordance with, and by instruments approved by the Department. Mixed income and mixed use projects are not eligible.

(d) MLA assistance will be provided to the municipality in the form of a loan.

1. The loan will be secured by a lien on the property and an interest in future revenue collected in accordance with the development fee ordinance exclusively. The loan shall not be considered a general obligation of the municipality.

2. The municipality will repay the loan from the proceeds generated from the sale of the property to an affordable housing developer and from a percentage, as determined in accordance with (e) below, of the fees collected in accordance with the approved development fee ordinance

3. The interest rate on the loan shall be zero percent for the first five years. If, after five years, the proposed affordable housing project has not been placed in service, the interest rate shall increase to seven percent, compounded annually. When the proposed housing is placed in service, the interest rate will revert to zero percent.

4. The municipality is not precluded from retaining ownership of the property and leasing it below market rate or selling the property below market value, provided that evidence is presented that any resulting savings will benefit the residents of the proposed housing.

(e) The percentage of the development fees that must be dedicated to repayment of the loan shall be no less than the percentage of the project paid for by the loan.

(f) MLA projects may be combined with any other eligible project type.

5:43-3.7 Preservation, acquisition, moderate rehabilitation projects

(a) Except as noted in (a)1 through 3 below, the Balanced Housing program will provide funding to eligible applicants for the preservation of existing affordable housing, the acquisition of vacant housing for the purpose of making it affordable, and for the moderate rehabilitation of existing units, or any combination thereof.

1. Preservation, without moderate rehabilitation, in a low income census tract, shall not be eligible;

2. Acquisition, without moderate rehabilitation, in a low income census tract, shall not be eligible; and

3. The acquisition or acquisition and rehabilitation of units that are in standard condition and affordable to low and moderate income households, but are not deed restricted, shall be permitted, in so far as the proposed activity will lower the range of affordability or extend the duration of the affordability in accordance with the housing affordability, controls applicable at the time of the transaction.

(b) Sponsors of moderate rehabilitation projects shall be required to demonstrate on-going management capacity and financial feasibility of the project for the length of the control period

including, but not limited to, the provision of reserves to ensure timely repair and replacement of any systems not addressed during the initial rehabilitation.

(c) For the purpose of acquisition, at least 70 percent of units in a building must be vacant or currently occupied by a low and moderate income household.

(d) Any structure repaired in whole or in part with Balanced Housing funds must, upon completion, be certified as standard.

(e) The amount of subsidy for preservation shall not exceed the difference between the market value of the property without restrictions and the market value of the property with restrictions as determined by an appraiser, whose method and credentials have been accepted by the Department.

1. Initially, the Department will utilize the New Jersey Housing and Mortgage Finance Agency for the selection and procurement of appraisers, until an equivalent system can be replicated at the Department. Cost for the appraisal will be born by the applicant.

2. To be considered for approval, the appraiser must apply to the Agency, and the application shall include the information required, or demonstrate that the appraiser has the experience, as follows:

i. The completion of appraisals similar to the types of projects funded by the Agency and the Department;

ii. The counties they have done work in and wish to be considered for;

iii. Names and addresses of references;

iv. A copy of the appraisers current New Jersey Appraiser License;

v. A Signed acknowledgement of the Code of Ethics and Mandatory Affirmative Action;

vi. A current copy of the appraisers Errors and Omission policy; and

vii. Sample appraisals for every type of work they seek.

3. An appraiser review committee of three reviews all applications and sample appraisals, and if deemed to have sufficient experience and accepted, the appraiser goes on a computerized rotating selection list;

(f) The Balanced Housing subsidy for a preservation, acquisition, moderate rehabilitation project shall not exceed \$50,000 per unit.

5:43-3.8 Section 202[. Section 811] and non-HOPE VI public housing new construction projects

(a) The Balanced Housing Program may provide assistance to eligible applicants applying on behalf of public housing authorities and not-for profit sponsors to construct projects in accordance with Section 202 of the Housing Act of 1959 (12 U.S.C. §1709) [Section 811 for the National Affordable Housing Act (PL 101-625)] or, with the exception of HOPE VI Projects (Section 24), the U.S. Housing Act of 1937 (92 U.S.C. §§1437 et seq.).

(b) (No change.)

(c) Applications for a Section 202 [Section 811] or [Public Housing New Construction Project] **public housing new construction project** must include a conditional or final commitment from HUD.

5:43-3.9 Neighborhood rehabilitation projects

(a) (No change.)

(b) The maximum Balanced Housing grant to a municipality under a Neighborhood Rehabilitation Agreement shall be \$[300,000]**500,000**.

(c) Rehabilitation activity shall average at least \$[8,000]**10,000** per unit over the contract period. The municipality may use the lesser of 16 percent of the grant or \$2,000 per unit to administer the program.

(d)-(j) (No change.)

5:43-[3.12]**3.10** HOPE VI projects

(a) (No change in text.)

(b) The maximum Balanced Housing subsidy for a HOPE VI project shall be \$[10,000] **\$40,000** per unit, for projects awarded by HUD prior to January 1, 2006 or \$25,000 for those projects awarded by HUD on or after January 1, 2006.

(c) Applicants shall be required to provide a full certified accounting from the relevant housing authority of all HOPE VI funding, commitments, obligations and expenditures.

5:43-3.11 Distressed projects

(a) The Balanced Housing Program may provide assistance to eligible applicants applying on behalf of existing Balanced Housing projects in need of additional financial assistance to establish and/or ensure the ongoing viability of the housing.

(b) Applicants, their subsidiary or parent corporations, receiving funding pursuant to this section, shall not be eligible for any other form of Balanced Housing assistance for a period of two years from the time that such funding is received

(c) Eligible projects shall be limited to those proving severe financial distress and an inability to meet normal operating and debt service obligations. Inability to meet debt service ratios, fund reserve accounts, pay deferred developer fee and/or any other partnership distributions, shall not be considered indicators of severe financial distress.

(d) Eligible projects must be in service for at least two years and shall be in compliance with all affordability control, audit and reporting requirements of the Grant Agreement and loan documents from the Division.

(e) The amount of assistance and the terms and conditions of assistance shall be at the discretion of the Commissioner.

(f) Applicants will provide documentation of need including, but not limited to:

1. A narrative report setting forth the reason(s) that assistance is necessary, steps that have been taken to establish stability, and a specific dollar request for financial support from the Balanced Housing program;

2. Annual audits for the project for all years since the project was completed or placed in service;

3. A Copy of the Equity Investor agreement, if the project has received LIHTCs, including current contact information for the equity investor;

4. A listing of all project debt (hard and soft), the names and current contact information of lenders, the terms and conditions, the current balance and status of all loans;

5. A Certification from the developer/general partner as to the total amount of developer fee allowed, initially taken and still pledged to the project;

6. A Certification from the developer/general partner/equity investor as to any cash infusion into the project after the project was placed in service;

7. A Capital Needs Assessment for the project done by an independent party (architect/engineer), or by the owner using a form approved by the Department and reviewed and certified by the Technical Services Division of the NJHMF;A;

8. A 20-year cash flow projection; and

9. A Copy of the Municipal Payment in Lieu of Taxes (PILOT) Agreement.

(g) Sponsors of moderate rehabilitation projects shall be required to demonstrate on-going management capacity and financial feasibility of the project for the length of the control period including, but not limited to, the provision of reserves to ensure timely repair and replacement of any systems not addressed during the initial rehabilitation.

(h) An applicant may request an exception to the allowable annual rental increase subject to the following:

1. A sponsor may request an exception to the allowable annual rental increase no more than once during a 10 year period;

2. If the rents are not subject to review and approval by HUD, or subject to automatic annual adjustments pursuant to a valid Housing Assistance Payments contract, or regulated by a local rent control board, then the Commissioner may make or approve a rent increase without a hearing, as long as, the resulting rents do not exceed the rents in effect for the same units in the housing project at any time in the previous 12 months by more than the combined percentage of (h)2i and ii below:

i. The allowable increase as identified in the existing program affordability control documents for the project; and

ii. The percentage, up to a maximum of 12 percent annually, needed to fund operation deficits, debt service arrears or reserves for

repair and replacement incurred at the housing project. No part of the rent increase shall be used for return on equity to the sponsor;

3. If a rent increase is being requested the applicant must provide proof that all tenants have been notified, in writing, of their request for the rent increase. The letter must specify the percentage increase being requested and how it will affect rents; and

4. The allowable rent increase shall be at the sole discretion of the Commissioner and shall be final.

5:43-[3.14]3.12 Other projects

(a) In addition to the previously listed types of Balanced Housing projects, the Department reserves the right to fund projects that do not fit into any of these formats. Such projects may include, but shall not be limited to pilot programs, those that are unique in terms of development, ownership, occupancy characteristics, and transitional facilities for the homeless or matching funds required in order to secure other financing, which without the match, would be lost to the State of New Jersey.

(b) (No change in text.)

SUBCHAPTER 4. AFFORDABILITY CONTROLS

5:43-4.1 Uniform housing affordability controls

(a) Except as noted in (a)1 and 2 below, all units receiving funding from Balanced Housing shall be subject to the pertinent housing affordability controls N.J.A.C. 5:80-26, with the following exceptions:

1. Units excluded from the controls pursuant to N.J.A.C. 5:80-26.1; and

2. Units precluded from controls in accordance with N.J.S.A. 52:27D-320(f).

5:43-4.2 New Jersey Housing Resource Center

All units funded by Balanced Housing shall use the New Jersey Housing Resource Center regardless of the administrative agent selected by the applicant.

5:43-4.3 Section 8 assistance

(a) A household receiving assistance under Section 8 of the Federal Housing Act of 1937, as amended by the Housing and Community Development Act of 1974, shall be eligible for housing under the Balanced Housing program, provided, however, that the following are met:

1. The household meets all requirements for the Balanced Housing program; and

2. The combined household rental payment and housing assistance payment shall not exceed that provided for in the Balanced Housing grant agreement.

APPENDIX L

For purposes of N.J.A.C. 5:43-2.4(a)2, soft cost shall consist of exclusively of the following:

- Accounting
- Affordability controls administrative fees
- Appraisal
- Architect fees
- Closing costs
- Construction fees
- Construction interest
- Construction management
- Cost certification
- Cost of issuance
- Equipment and furnishing
- Engineer
- Environmental report
- Financing fees
- HMFA bond commitment fee
- Housing consultant
- Insurance during construction
- Legal fees
- Market study
- Marketing and lease-up
- Negative arbitrage
- Soil borings

- Survey
- Taxes during construction
- Title costs

APPENDIX M

Balanced Housing Green Building Requirements

1. Siting and Land use

- Follow smart growth principles as set forth in the State Development and Redevelopment Plan.

- Where feasible, site new construction to optimize passive solar strategies, including orienting the building with respect to the sun's relationship to the site.

- Distribute proper energy efficient windows in appropriate placement.

- Include passive shading such as suitable overhangs, awnings and/or deciduous trees.

2. Indoor Air Quality

- During construction, completely seal forced air duct and HVAC equipment openings with plastic film and tape until after final cleaning of unit. If ducted system is used for construction heating, install MERV 8 filters on all return grills for duration of construction to contain dust.

- Utilize products that produce low volatile organic compound low paints, sealants, and adhesives in all interior applications.

- Install encapsulated batts when utilizing fiberglass insulation between joists of accessible basement ceiling to reduce dust and increase thermal performance.

- Install pleated furnace filters for forced air systems to trap allergens.

- Install durable, healthy flooring in units such as bamboo, cork, linoleum, etc.

3. Energy Efficiency

- All units must adhere to current New Jersey Energy Star Construction requirements.

- All Appliances must be Energy Star certified.

- Install one Energy Star lighting fixture in each occupied room in unit.

4. Resource Efficiency

- Develop and submit plan and protocol to properly sort and dispose of construction waste material separate from recycled material. Establish a system for daily collection and separation of materials designated to be recycled including at a minimum, concrete, metals, wood, recyclable plastics, bottles and cardboard. Plan must also include the percentage of construction and the percentage of demolition that will be recycled waste.

- Contractor must include in each subcontract the requirement to sort the above materials and dispose of each in the designated container or debris pile. Recycling areas shall be clearly marked to avoid co-mingling of materials.

- Recycling—For rental properties, provide a plan for the recycling of household (single family/townhouse) or individual unit (multifamily all types) recyclables (glass, plastic, metals, paper)

5. Water Efficiency

- Fixtures must include the following standards:

Bathroom faucets	0.5 gpm bath aerators
Showerheads	2.0 gpm (flow rate is typically reduced by flow restriction or aeration)
High Efficiency Toilets	<= 1.3 gallons per flush toilets
Washing machines located in common areas of multi-family units must be front-loading horizontal axis.	
Water efficient landscaping	
Turf: Select a type of grass that can withstand low rainfall periods and become dormant during hot, dry summer conditions. Turf no more than 50 percent of the landscaped area. If installing plants as an alternative, or in addition to turf areas, utilize native and/or drought resistant plants with either drip irrigation or no irrigation.	

PROPOSALS

Irrigation: Install irrigation system controllers such as rain or soil moisture sensors or use a weather driven programming system. Use high efficiency nozzles and pressure regulating devices to maintain optimal pressure and prevent misting. Consider collected rainwater as an alternative source of irrigation water.

6. Building Durability and Moisture Protection

- Install window flashing to avoid moisture penetration.
- Provide exterior wall drainage plane using building paper, housewrap or layered water resistant sheathings (rigid insulation or a foil covered structural sheathing) with seams taped or sealed.
- Where lot lines permit, design roof to include 18 inch minimum roof overhangs which are measured on horizontal from vertical wall to fascia.
- Roof gutter system downspouts shall discharge water at least three feet from the foundation.
- For pitched roofs, install 30-year or more roof shingles, for flat roofs, install 20-year shingles.

Resource Guides

New Jersey DCA Green Homes Guidelines

New Jersey Clean Energy Program at www.njenergystarhomes.com

Energy and Environmental Building Association at www.eeba.org
